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REPLACES ALL MEMBERS OF CALIFORNIA AIR RESOURCES BOARD AND REALLOCATES ITS FUNDING IF CERTAIN AIR QUALITY STANDARDS ARE NOT MET. INITIATIVE STATUTE.

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

REPLACES ALL MEMBERS OF CALIFORNIA AIR RESOURCES BOARD AND REALLOCATES ITS FUNDING IF CERTAIN AIR QUALITY STANDARDS ARE NOT MET. INITIATIVE STATUTE. If certain air quality standards are not met by July 1, 2023, the appointments of all California Air Resources Board members will terminate, twelve new members will be appointed by local air pollution control district boards, and all of the Board's funds and revenues will be reallocated to local air pollution control districts for programs designed to achieve immediate air quality improvements. Eliminates two nonvoting Board member positions; requires twelve voting members be appointed by local air pollution control districts, rather than by the Governor. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **If certain air quality standards are not met, eliminates all state funding for CARB – \$1.4 billion currently – for an unknown period of time; shifts some or all of this funding to local air districts. Potential loss of billions of federal dollars annually for state and local transportation projects for an unknown period of time.** (19-0032.)

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DEC 05 2019

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Mr. Becerra:

Young activists, particularly in the Latino community, are tired of lofty promises when it comes to clean air. Yes, the state has made great strides since 1970, but what progress have we made lately? California is at risk of losing billions in federal funding if we don't do something fast.

It is not just funding though. We have been breathing dirty air in our communities for our entire lives – and now we face the same prospects for dirty air for our children's generation. State regulators continue to push their personal myopias, while battery factories are located in our communities, the price of a Tesla remains out of reach, and politicians keep telling us "it will get better" at some date in the distant future.

It is time to apply the principle of "subsidiarity" to clean air. As Jerry Brown said, instead of prescriptive commands issued from headquarters in Sacramento, the local air boards – from Los Angeles to the San Joaquin Valley – can make more caring and impactful decisions for our communities. With this in mind, we submit this initiative.

Signed,



Adolfo Ramos

CALIFORNIA LOCAL AIR QUALITY URGENCY ACT

SECTION 1. FINDINGS AND DECLARATIONS

The People of California hereby find and declare the following:

- (a) Whereas, the 2019 "State of the Air" report issued by the American Lung Association identified California as having the worst air pollution of any state.
- (b) Whereas, the South Coast Basin has the highest levels of ozone pollution in the nation.
- (c) Whereas, the San Joaquin Valley has the highest levels of particulate matter pollution in the nation.
- (d) Whereas, Los Angeles ranks as the eighth-worst city in the world for new asthma cases, behind Shenyang, China.
- (e) Whereas, in 2018, the Los Angeles region violated federal ozone standards for eighty-seven consecutive days, the longest such period in at least twenty years.
- (f) Whereas, 90% of California residents experienced at least one day of unhealthy or hazardous air-pollution levels in 2018.
- (h) Whereas, air pollution in California kills 25,000 people annually and costs hundreds of millions of dollars in medical expenses.
- (i) Whereas, the current federal administration is seeking to roll back regulations on air pollution and clean power.
- (j) Whereas, California has been a national leader in environmental regulation, and the citizens of California wish to maintain the progress we've made since the passage of the Clean Air Act.
- (i) Whereas, state officials have failed our children if those officials do not act rapidly to clean up the air in our local communities;
- (k) Whereas, our local air boards understand better the damage done to our communities by air pollution and the immediate needs of our neighborhoods;

SECTION 2. CALIFORNIA LOCAL AIR QUALITY URGENCY ACT

Section 39510 of the Health and Safety Code is hereby amended as follows:

§ 39510. State Air Resources Board

- (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 14 voting members.

Notwithstanding any other provisions of law, if the 1997 8-hour ozone National Ambient Air Quality Standards in both the San Joaquin Valley and South Coast Air Basins are not attained by July 1, 2023, the following shall then occur:

(1) The terms of all members of the state board shall terminate effective July 1, 2023, and a new state board with twelve voting members shall be immediately reconstituted pursuant to the provisions of subsection (c).

(2) The state board shall retain its regulatory powers, but all funds and revenues budgeted to or controlled by the state board shall be reallocated as follows:

(i) 100 percent of those funds and revenues shall be allocated to the local air-pollution-control districts on a per-capita basis until attainment is reached for the 1997 8-hour ozone National Ambient Air Quality Standards in both the San Joaquin Valley and South Coast Air Basins.

(ii) Neither the Governor or Legislature shall reallocate any funds or revenues to the state board, or allocate new funds thereto, except to the local districts as provided above, until attainment is reached for the 1997 8-hour ozone National Ambient Air Quality Standards in both the San Joaquin and South Coast Air Basins.

(iii) To the extent possible, any funds allocated to the local air-pollution-control districts through this section shall be directed to programs designed to achieve immediate air-quality improvements and cost-effective results. The local districts shall have the ability to suspend any projects or priorities in their respective districts that are determined to not be cost-effective or designed to achieve immediate improvements in air quality.

(b) ~~Twelve~~ All members shall be appointed by the ~~Governor, with the consent of the Senate,~~ the local air-pollution-control district boards, in accordance with subsection (c), on the basis of their demonstrated interest and proven ability in the field of air-pollution control and their understanding of the needs of the general public in connection with air pollution problems.

~~(c) — Of the members appointed pursuant to subdivision (b), six members shall have the following qualifications:~~

~~(1) — One member shall have training and experience in automotive engineering or closely related fields.~~

~~(2) — One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.~~

~~(3) — One member shall be a physician and surgeon or an authority on the health effects of air pollution.~~

~~(4) — Two members shall be public members.~~

~~(5) — One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.~~

~~(c) Of the members appointed pursuant to subdivision (b), six members shall be board members from districts who shall reflect the qualitative requirements of subdivision (c) to the extent practicable. All members of the state board shall be appointed by the respective local air pollution control district boards. Of these members:~~

~~(1) One shall be a board member from t~~The south coast district board shall appoint two members.

~~(2) One shall be a board member from t~~The bay district board shall appoint two members.

~~(3) One shall be a board member from t~~The San Joaquin Valley Unified Air Pollution Control District board shall appoint two members.

~~(4) One shall be a board member from t~~The San Diego County Air Pollution Control District board shall appoint two members.

~~(5) One shall be a board member from~~ Two members in total shall be appointed from the boards of the Sacramento District, the Placer County Air Pollution Control District, the Yolo-Solano Air Quality Management District, the Feather River Air Quality Management District, and the El Dorado County Air Pollution Control District.

~~(6) One shall be a board member of any other district.~~ Two members in total shall be appointed from the boards of any other districts.

~~(7) For joint appointments, a member shall be considered appointed when a majority of the Districts with appointment power have ratified an appointment.~~

(d) ~~The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one member to the state board who~~ Of the members appointed pursuant to subsection (c), two shall be ~~a persons~~ persons who works directly with communities in the state that are most significantly burdened by, and vulnerable to, high levels of pollution, including, but not limited to, communities with diverse racial and ethnic populations and communities with low-income populations.

(e) Any vacancy shall be filled by the appointing authority within 30 days of the date on which it occurs. ~~If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.~~

(f) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. A member of the state board shall not be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that a member of the state board who is also a member of a district board shall not participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

(g)

(1) Except for initial staggered terms that shall be established by the state board, the term of office for voting members shall be six years. Upon expiration of the term of office of a voting member, the appointing authority may reappoint that member to a new term of office, subject to the requirements of subdivision (b), if applicable.

(2) Notwithstanding paragraph (1), a person who is a member of the state board pursuant to subdivision (d) shall not continue as a member if he or she ceases to hold the membership that qualifies that person to be appointed as a member of the state board. The membership on the state board held by that person shall terminate immediately upon ceasing to hold that qualifying membership.

(h) ~~In addition to subdivision (a), two Members of the Legislature shall serve as ex-officio, nonvoting members of the state board. One member shall be appointed by the~~

~~Senate Committee on Rules. One member shall be appointed by the Speaker of the Assembly.~~

SECTION 3. AMENDMENT

This Act shall only be amended in the Legislature by a statute passed by a vote of four fifths of the members of both houses.

SECTION 4. SEVERABILITY

If any provision of this Act or the application thereof is held to be invalid or unconstitutional, that shall not affect any other provisions or applications of the Act that can be given any effect without the invalid or unconstitutional provision, and to this end the provisions of this Act are severable.

SECTION 5. CONFLICTING MEASURES

In the event another initiative measure or measures appearing on the same statewide ballot seek to impose requirements on the operation of the Air Resources Board, said measure or measures shall be deemed to be in conflict with this Act. In the event this Act receives a greater number of votes than any measures deemed to be in conflict, the provisions of this Act shall prevail in their entirety, and the other measure or measures shall be null and void.

SECTION 6. LEGAL DEFENSE

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

- (a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made public.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.



January 24, 2020

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

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JAN 24 2020

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to funding for state and local air quality regulatory agencies (A.G. File 19-0032).

Background

Federal Air Quality Standards. The federal Clean Air Act (CAA) requires states to meet specified air quality standards for six pollutants, including ozone, that are considered harmful to public health and the environment. Under the CAA, the U.S. Environmental Protection Agency (EPA) revises the standards every five years and designates areas that do not meet the standards. Areas that do not meet the standards are considered “nonattainment” areas, which range from marginal to extreme nonattainment.

California Air Resources Board (CARB). The CAA requires that each state has a plan—called a State Implementation Plan (SIP)—to demonstrate how air quality standards will be achieved, maintained, and enforced. CARB is the state entity responsible for developing this plan in California. CARB works with each local air district to develop an air quality management plan that is incorporated into the SIP, including for nonattainment areas. Under federal law, if a state does not submit a SIP to EPA, nonattainment areas within that state become ineligible for federal highway funds.

In addition, CARB generally is responsible for the regulation of mobile sources of emissions—such as cars and trucks. CARB also operates various financial incentive programs to encourage emission reductions and administers other programs, such as cap-and-trade.

CARB administers various fees and other charges to support its activities, as well other state and local programs. In 2019-20, CARB is budgeted at \$1.4 billion, which comes from revenues generated by various taxes and fees.

Local Air Quality Districts. There are 35 air districts in California. In addition to working with CARB to produce air quality management plans as part of the SIP, air districts are responsible for implementing the plans within their jurisdictions. Air districts regulate stationary

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sources of emissions—such as factories and refineries—and operate incentive programs to encourage emission reductions in their jurisdictions. Two air districts in California are designated extreme nonattainment of the 1997 federal air quality standards for ozone—the San Joaquin Valley Air Pollution Control District (SJVAPCD) and South Coast Air Quality Management District (SCAQMD). In 2019-20, SJVAPCD has an operating budget of \$60 million, and SCAQMD has an operating budget of \$171 million.

Proposal

The measure requires that the following provisions be implemented if SJVAPCD and SCAQMD are not in attainment of the federal air quality standards for ozone by July 1, 2023:

- ***Reallocate All CARB Funds to Local Air Districts.*** The funds would be allocated to local air districts on a per capita basis to be used for air quality improvement programs. The measure prohibits the Governor and Legislature from providing CARB any additional funds. The reallocation of funds to local air districts would be in effect until attainment of the federal air quality standards for ozone is reached in the two air districts.
- ***Maintain CARB's Regulatory Powers.*** Though CARB would not have any funding, the measure states that the board would retain its regulatory powers.
- ***Require New Board Members to Be Appointed.*** The terms of all existing CARB board members would be terminated and replaced by individuals appointed by local air districts. (Currently, the Governor appoints the board members.)

Fiscal Effects

The provisions of this measure would have various fiscal effects for state and local governments. The magnitude of these effects is subject to uncertainty and would depend on various factors, including actual ozone levels in SJVAPCD and SCAQMD in 2023 and subsequent years; how the measure is implemented by the state and local air districts; and responses by the federal government, courts, and private industry.

Reduced State Funding for Air Quality Activities. Under the measure, if SJVAPCD and SCAQMD are not in attainment with 1997 federal air quality standards for ozone, CARB would lose all of its funding—currently about \$1.4 billion—for an unknown period of time. Consequently, CARB could not employ staff to operate its programs or fulfill its regulatory responsibilities. Without administrative and enforcement staff, CARB programs are less likely to generate as much revenue as they do currently from fees and other charges, which would result in a decline in revenues for programs operated by other state departments. For example, without staff to administer the state's cap-and-trade program, it is unclear how much revenue would be generated. To the extent that this program's revenue—currently about \$3 billion annually—declined, there would be less funding for the various state programs funded by cap-and-trade proceeds, such as transit and forest health projects. It is unclear the extent to which the state could authorize a different state department to perform the program administration work currently done by CARB given the measure's requirement that CARB retain its regulatory powers. Moreover, if another department could be given these responsibilities, the state would

need to identify new funding sources to support these activities, resulting in additional state costs.


Potential Loss of Federal Transportation Funds. If CARB does not have the staff or funding to develop California's SIP, the state would be out of compliance with the federal air quality reporting requirements. As a consequence, all nonattainment areas in California would be ineligible to receive federal highway funds, potentially totaling billions of dollars annually. Such loss of federal funds would affect both state and local transportation projects.

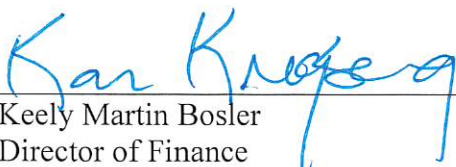
Local Fiscal Effects. Under the measure, the 35 local air districts would receive increased funds for air quality improvements that had previously been budgeted for CARB. However, the amount of additional funds local air districts would receive is uncertain, given that it is unclear how much revenue would be generated from programs currently administered by CARB, such as the cap-and-trade program.

Summary of Fiscal Effects. We estimate that this measure could have the following major fiscal effects on state and local governments:

- If certain air quality standards are not met, eliminates all state funding for CARB—\$1.4 billion currently—for an unknown period of time; shifts some or all of this funding to local air districts.
- Potential loss of billions of federal dollars annually for state and local transportation projects for an unknown period of time.

Sincerely,

for 
Gabriel Petek
Legislative Analyst

for 
Keely Martin Bosler
Director of Finance